

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 379 (PKC)

5 Juan Antonio Hernandez
6 Alvarado,

7 Defendant.

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8 Sentencing

9
10 New York, N.Y.
11 March 30, 2021
12 2:00 p.m.

13 Before:

14 HON. P. KEVIN CASTEL,

15 District Judge

16 APPEARANCES

17 AUDREY STRAUSS

18 United States Attorney for the
19 Southern District of New York

EMIL J. BOVE

20 MATTHEW LAROCHE

Assistant United States Attorney

21 PETER BRILL

22 DAVID GRAY

Attorneys for Defendant

23 Also present: Special Agent Brian Fairbanks, DEA
24
25

1 (In open court; case called)

2 THE COURT: United States v. Juan Antonio Hernandez
3 Alvarado.

4 For the government.

5 MR. LAROCHE: Good afternoon, your Honor. Matt
6 LaRoche and Amil Bove. With us is Special Agent Brian
7 Fairbanks for the Drug Enforcement Agency.

8 THE COURT: Good afternoon to you all.

9 For the defendant.

10 MR. BRILL: Good afternoon, your Honor.

11 Peter Brill on behalf of Mr. Hernandez Alvarado.
12 Accompanying me is David Gray, an associate from my office.

13 THE COURT: Good afternoon and Good afternoon,
14 Mr. Hernandez Alvarado.

15 Before we begin, I want to get this on the record that
16 I direct the prosecution to comply with its obligation under
17 *Brady v. Maryland* and its progeny to disclose to the defense
18 all information, whether admissible or not, that is favorable
19 to the defendant, materially to guilt or punishment and known
20 to the prosecution. Possible consequences for noncompliance
21 may include dismissal of individual charges, or the entire case
22 or granting a new trial, professional discipline, or court
23 sanctions on the attorneys responsible. As you know I have
24 entered a written order for fully describing the obligations
25 and possible consequences for failing to meet those obligations

1 and I direct the prosecution to review and comply.

2 Let me inquire, Mr. LaRoche, does the government
3 understand its obligations and will it fulfill them.

4 MR. LAROCHE: It does understand those obligations and
5 will fulfill them and at least believes it has fulfilled them
6 in this case, your Honor.

7 THE COURT: Mr. Bove, same question.

8 MR. BOVE: Yes, your Honor. I stand by what
9 Mr. LaRoche said.

10 THE COURT: Thank you.

11 Mr. Brill, has the defendant received, reviewed, and
12 discussed the presentence report that was revised by Probation
13 on February 12th, 2012?

14 MR. BRILL: Yes, your Honor.

15 THE COURT: All right.

16 First of all, let me go through the materials I have
17 on the subject of sentencing. I have a memorandum that was
18 filed by predecessor counsel on or about February 9th, 2020. I
19 have a sentencing memorandum that was submitted by the
20 government on March 16th, 2021. I have a submission from you
21 as well, which helpfully annexes letters from members of the
22 defendant's family, friends and others.

23 Do I have everything I should have on the subject of
24 sentencing?

25 MR. BRILL: In a sense what has been submitted to the

1 Court, yes, your Honor yes. Before we proceed Mr. Hernandez
2 Alvarado has asked me to inform the Court that he does not
3 believe he is prepared to move forward to sentencing. I
4 informed the Court of this yesterday afternoon as well as the
5 government. I am happy to go into it more in detail now as to
6 his concerns, but he wanted me to make that clear at the outset
7 of sentencing.

8 THE COURT: I appreciate that very much. The reality
9 is that the jury that convicted Mr. Hernandez returned its
10 verdict in October of 2019. On the day the jury returned the
11 verdict, my recollection is that we set a date for sentencing.
12 Now, the date for sentencing has been adjourned understandably
13 at the defendant's request. I have granted repeated
14 adjournments of the sentencing.

15 The time has come for the defendant to be sentenced.
16 He has had in hand the presentence report revised by Probation
17 since February, 12, 2020, over a year ago and before the
18 shutdown of the pandemic.

19 So I am not inclined to adjourn the sentencing
20 further.

21 THE COURT: Thank you.

22 MR. BRILL: If I may say a couple things with regard
23 to that. I don't believe my client had the PSR quite that
24 earlier, but I don't believe predecessor counsel provided it to
25 him. So he did get it to me.

1 Second, if your Honor would allow me to make a brief
2 record as to Mr. Hernandez Alvarado's concerns.

3 THE COURT: Yes.

4 MR. BRILL: Your Honor, given the fact that certain
5 members of the prosecution team in this matter had concerns
6 raised about their conduct in another matter before a different
7 judge in this court coupled with the Court's -- well, the chief
8 executive's *Brady* order and the Court's *Brady* order in this
9 specific case has raised concerns for Mr. Hernandez Alvarado in
10 this case that *Brady* material that should have been turned over
11 to him has not been turned over to him. Mr. Hernandez Alvarado
12 has asked us on numerous occasions to go over specific aspects
13 of the 3500 material turned over to him to look for *Brady*
14 material. He also believes that there is material that exists
15 outside the trial record that would tend to prove his innocence
16 in this matter.

17 We have spent a significant amount of time going into
18 the evidence that was available to us. I have explained
19 without giving away anything in attorney-client privilege to
20 Mr. Hernandez Alvarado that we are not at the stage of the
21 proceeding where we can file, say, an appeal or a 2255 or even
22 a Rule 33 motion for new evidence. We could file the Rule 33
23 motion for new evidence, but we have three years from verdict
24 to do that and so he is still well within the statute of
25 limitations on that.

1 However, we cannot go into the government's files
2 without the government's authorization to look for things that
3 may tend to clear Mr. Hernandez Alvarado. Although, those
4 things may exist, they are certainly not within our power to
5 find them. He is not satisfied with that answer. As such he
6 is not satisfied with our representation and that is where we
7 find ourselves today.

8 THE COURT: Well, thank you, Mr. Brill, for that
9 update and report. I will note that it is just a simple
10 reality that the reason an order was entered in this case
11 relating to *Brady* material and the reason I made my oral
12 statement was as you alluded to I think you referred to it as
13 chief executive of the country. It was actually the President
14 signing into law a statute that required that. The statute had
15 nothing specific to do with this case. I think you were
16 alluding to a case before Judge Nathan of this court. I am
17 well aware of that case. As is the case, this is not the time
18 or the place for investigations, motions, or the like.

19 There was an indictment. There was an opportunity for
20 retained counsel to make applications to the Court. They did
21 from time to time. They were ruled on by the Court. A jury
22 was empaneled. The jury heard the evidence and the jury
23 returned its verdict. I think long before or maybe before you
24 got involved in this case, certainly there was the motion at
25 the close of the evidence by defense counsel and the Court

1 ruled on that or it's implicitly denied.

2 So we're at a point at this stage where the time has
3 come to pass sentence. Once sentence is passed, the judgment
4 of conviction is entered Mr. Hernandez will have the
5 opportunity to pursue appeal to the United States Court of
6 Appeals for the Second Circuit.

7 The other item that I didn't mention that I have is a
8 March 29, 2021, letter from the government enclosing a proposed
9 forfeiture order.

10 I will ask the government, do I have everything that I
11 should have on the subject of sentencing?

12 MR. LAROCHE: Yes, your Honor.

13 THE DEFENDANT: (In Spanish).

14 THE COURT: Mr. Hernandez Alvarado, you will have an
15 opportunity in the course of this proceeding to speak. I will
16 ask you to speak or invite you to speak and you may at that
17 point address the Court and I will patiently listen to what you
18 have to say.

19 Understood?

20 Now, with regard to objections by the defendant, I
21 note that the memorandum that was filed by predecessor counsel
22 was filed before the presentence report was revised. So that
23 is a reality here. So the objections do not in essence address
24 the PSR that is before the Court. I don't see drafts of the
25 PSR. Defense counsel see them. The Court doesn't see them.

1 And that is fair because they are finalized after hearing from
2 the parties.

3 I note on page 27 of the PSR, there were a number of
4 paragraphs that Probation reports that the defendant objects
5 to. I guess I would ask you are these objections lodged
6 because understandably Mr. Hernandez maintains his innocence in
7 this case and therefore he is objecting to conclusions that
8 proceed from the jury's verdict; is that the premises of the
9 objections?

10 MR. BRILL: Your Honor, primarily, yes. Although, I
11 believe with regard to paragraph 71, there is an aggravated
12 role enhancement objection.

13 THE COURT: We'll get to that, but thank you for
14 pointing that out.

15 I will take that up. I was looking on page 27. It
16 refers to 16, 17, 19, 21, 24 to 41, 47, 49 to 51. So with
17 regard to those, the basis for the objection is they are
18 inconsistent with the claim of innocence; is that it? It's not
19 that there is an alternate narrative that Mr. Hernandez is
20 putting forth to the Court or some correction as to what the
21 trial evidence was. It is he objects to the extent these
22 paragraphs are inconsistent with his claim of innocence; is
23 that accurate?

24 MR. BRILL: That is accurate, yes.

25 THE COURT: Now, I am going to leave the paragraphs in

1 the PSR as unchanged. There has been no argument advanced to
2 me that the paragraphs are inconsistent with the trial
3 evidence. It is simply that defendant's view is the trial
4 evidence ought not be believed, which is contrary to the jury's
5 verdict.

6 Now, with regard to paragraph 52, the basis for the
7 objection as I understand it is not a dispute with regard to
8 the facts specifically but the claim that there is no evidence
9 that Mr. Hernandez had any knowledge and/or involvement in the
10 matter alleged in the paragraph; is that correct?

11 MR. BRILL: That's correct, your Honor.

12 THE COURT: What I propose do is to add that specific
13 sentence, *There is no evidence that Mr. Hernandez had any*
14 *knowledge and/or involvement in the matters alleged in this*
15 *paragraph*, at the end of paragraph 52.

16 Any objection from the government?

17 MR. LAROCHE: No, your Honor.

18 THE COURT: So I am going to add that paragraph 52.

19 With regard to paragraphs 55 to 57, the information in
20 paragraphs 55 to 57 I don't see any basis to strike that. It's
21 argued that he had no knowledge or involvement with any of the
22 information. Well, we know that is not true as to the DEA
23 interview on October 25th, 2016.

24 With regard to the disclosure of a witness' name,
25 there is no evidence that anyone other than defense counsel,

1 Mr. Hernandez, and an investigator working for the defense team
2 Chase Lalani had the information. It is what is the fair
3 inference to be drawn from that, but I don't understand there
4 to be a basis to dispute the facts that are set forth in 55,
5 56, or 57.

6 If there is, I need to hear that.

7 MR. BRILL: I think it conflates Mr. Hernandez with
8 those who were working for him or his attorneys at the time.
9 Mr. Hernandez's point is that the knowledge should not be
10 attributed to him and any resulting from those consequences
11 therefore should not be attributed to him.

12 THE COURT: I understand the objection. It will
13 stand.

14 With regard to the enhancements, I will hear you on
15 any you want to be heard on or you can, if you choose, rest on
16 the description of the defendant's position on pages 28 and 29
17 in paragraphs 64 to 73.

18 MR. BRILL: Again, specifically as to 73 it is the
19 same argument regarding of the information. We renew our
20 objection with regard to that.

21 Primarily as your Honor noted previously, the
22 objections are to the facts as brought out at trial are not in
23 keeping with Mr. Hernandez's understanding of the truth of the
24 matter. So he objects on that basis.

25 THE COURT: Understood.

1 With regard to paragraph 73, the enhancement stands.
2 Although, I base it on the disclosure of information relating
3 to the testifying witness as set forth in paragraphs 56 and 57.
4 It is based on that conduct. So the objections to the
5 enhancements in paragraphs 64, 65, 66, 68, 71 and 73 has been
6 considered and it is rejected. Of course, I also have the
7 benefit of predecessor's counsel memorandum on this subject.

8 MR. BRILL: Your Honor, before we move on, may I have
9 a moment with my client?

10 THE COURT: You may.

11 (Pause)

12 MR. BRILL: Okay, your Honor.

13 THE COURT: Does the government have any objections to
14 the facts set forth in the presentence report?

15 MR. LAROCHE: No, your Honor.

16 THE COURT: It seems to me that paragraph 47 should be
17 adjusted from 200,000 to 185,000, which reviewing the
18 submissions appears to be closer to the trial evidence.

19 Any objection from the government?

20 MR. LAROCHE: No, your Honor. Thank you.

21 THE COURT: Same question for the defense, any
22 objection to my lowering the number from 200,000 to 185,000 in
23 paragraphs 47?

24 MR. BRILL: No procedural objection, your Honor.
25 Understanding that the defendant maintains a general objection

1 to the facts brought out at trial.

2 THE COURT: Understood.

3 I know the government has one objection to the
4 guideline calculation with regard to abuse of trust. Do you
5 want to rely on your papers, or do you want to raise anything
6 by way of argument?

7 MR. LAROCHE: Rely on our papers, your Honor.

8 THE COURT: It seems to me that the abuse of trust
9 enhancement under 3B1.3 is appropriate. It provides that if
10 the defendant abused a position of public trust in a manner
11 that significantly facilitated the commission or concealment of
12 the offense, there is a two-level increase. A position of
13 public trust is characterized by professional or managerial
14 discretion, substantial discretionary judgment that is
15 ordinarily given considerable deference, and the position of
16 public trust must have contributed in some significant way in
17 facilitating the commission or concealment of the offense.
18 That's what the guideline provides.

19 Mr. Brill, is there anything beyond what is in the
20 written submissions that you wish to rely on with regard to
21 this enhancement?

22 MR. BRILL: Your Honor, we suggest that Probation's
23 determination is accurate if I accept the facts brought out at
24 trial that the business was ongoing long before there was a
25 position of public trust and therefore that abuse of public

1 trust would not be triggered because any additional benefit
2 received by that public position was de minimis at best.

3 THE COURT: Thank you.

4 It seems to me that it is appropriate here because,
5 first of all, the defendant was elected as a, if you will,
6 deputy congressperson in 2009. Suplente, I think it is called.
7 It was after 2012 when the Honduran Constitution was amended to
8 delete the prohibition on extradition or to allow extradition,
9 that the defendant assumed the position and was elected to the
10 position of congressperson in his own right. I believe the
11 amendment was in 2012 and he was elected in 2014. Having this
12 position in Congress gave him greater confidence and those who
13 dealt with him in the drug trafficking business greater
14 confidence that he would not be extradited. It gave him the
15 confidence and ability that he could meet with DEA agents in
16 2016 confident at least in his own mind that the DEA wouldn't
17 dare touch an elected congressman.

18 My recollection of the testimony is he met with Romaro
19 of the concharos to talk about rerouting government payments to
20 other concharo front companies and that was after he was
21 elected to Congress. There, he was using his own governmental
22 position to assist with drug trafficking and also the
23 concealment of drug trafficking. So the abuse of trust
24 enhancement is allowed.

25 Any other objection to the guideline calculation?

1 MR. LAROCHE: No, your Honor.

2 THE COURT: Mr. Brill, any other objection to the
3 guideline calculation?

4 MR. BRILL: Nothing specific, your Honor.

5 THE COURT: Thank you.

6 I adopt as my guideline calculation the guideline
7 calculation set forth in the PSR. The defendant is at total
8 offense level 43, criminal history category one. Further, I
9 adopt as my findings of fact the facts set forth in the
10 presentence report supplemented by the trial evidence.
11 Obviously, I was here for the trial. I heard the evidence. I
12 read the exhibits. The facts of record are also part of my
13 findings of fact for this proceeding.

14 I will now give Mr. Brill an opportunity to speak on
15 behalf of the defendant and then I will give Mr. Hernandez an
16 opportunity to speak on his own behalf.

17 MR. BRILL: Thank you, your Honor.

18 As I noted in my submission to the Court, our
19 government has made a determination that in some remote way,
20 the enforcement of the United States narcotics laws against
21 citizens of sovereign nations far removed from ours is in this
22 country's best interest. Even if all of the evidence in this
23 case is believed, the connection to the United States it is our
24 position is tenuous. That doesn't change the fact of course
25 that these charges were brought and a jury was seated and a

1 jury delivered the verdict it did.

2 What we are suggesting is more, I suppose, at this
3 point a public policy objection to this type of prosecution
4 where the United States decides that it can police the world to
5 rid the world what it believes to be bad actors. The
6 government obviously has a very different view. They believe
7 that my client had a direct negative impact on the citizens of
8 this country. Frankly, as I have noted, I believe the citizens
9 of this country have had a direct negative impact on themselves
10 with their voracious appetite for illegal narcotics and perhaps
11 the resources of our government should be better focused on
12 helping the victims of addiction whether they are from legal or
13 illegal narcotics in this country.

14 Mr. Hernandez Alvarado is one of 12 children from a
15 very hardworking and educated family. He has young children of
16 his own that no matter what sentence the Court imposes will no
17 doubt never see him again. If they do ever do see him again,
18 it will be through a thick sheet of plexiglass or behind bars.

19 He will not have the life that he once had. No doubt
20 many in this room or elsewhere believe that is an appropriate
21 result; but Mr. Hernandez Alvarado maintains that this is not
22 the man he is, not the man he was, and these are not crimes
23 that he committed. He maintains his innocence of these crimes
24 and feels that the witnesses who testified against him were not
25 only self-motivated but motivated against him in a sufficient

1 enough way to make up as much as they could to ruin his life
2 and the life of his family, and they succeeded in doing so. He
3 will no doubt appeal his conviction and continue to maintain
4 his innocence through this process.

5 That being said, your Honor, the suggestion that there
6 is any difference in reality between a 40-year sentence and a
7 life sentence is really specious. He is a man in his 40s in
8 prison. As prior counsel noted -- I am not sure where they got
9 this calculation, but I don't doubt it -- every year in prison
10 amounts to two years on the outside. So he is unlikely to live
11 to 82 or so. Even with good time it would be 75 or something
12 like that. He is unlikely to make it there. If he did, he
13 would be an old, sick and broken man at that point.

14 So I would urge the Court for whatever mercy the Court
15 has to impose the mandatory minimum sentence. Perhaps he will
16 see the light of day outside of prison unlikely as that may
17 seem.

18 THE COURT: Thank you, Mr. Brill.

19 Juan Antonia Hernandez Alvarado, this is your
20 opportunity to speak to address the Court directly to bring to
21 my attention any facts or circumstances that you believe I
22 should take account of in passing sentence upon you today. If
23 there is anything you wish to say, this is the time to say it.

24 THE DEFENDANT: Thank you, your Honor.

25 First of all, I would like to ask you whether the

1 letters that I sent to your office approximately a week and a
2 half ago reached you?

3 THE COURT: I have a letter which has been given to me
4 that was dated or received in chambers on March 23rd, 2021. I
5 have no other letter, unless it was referenced to something
6 that is in this envelope.

7 THE DEFENDANT: In one of my letters, your Honor, I
8 expressed my dissatisfaction with Mr. Brill's representation
9 and it may be because of the pandemic or because of things he
10 has to tend to. Two times and six calls like yesterday's I
11 have sent a countless number of emails that I realized because
12 of an issue that happened in Judge Nathan's chambers, you
13 issued a *Brady* order. Since that time I have been insistentlly
14 writing to my attorney so that he can explain to me and so that
15 we can work on the *Brady* violations. I haven't obtained any
16 answer until approximately two months ago.

17 The same as with the PSI, the presentence
18 investigation report, this day is the first time that I am able
19 to discuss this issue with him. I am not able to discuss it
20 with my prior attorneys nor with him until this day. The
21 purpose of my letters was to request from you what was my
22 attorney, Mr. Brill's, problem in tending to this matter.

23 In my meeting that I had with him two months ago, he
24 assured me that there would be no other hearing because we
25 would be working on the *Brady* violations. I posted more than

1 five and he told me you will have an answer in 15 days. To my
2 surprise I find out on the news that my sentence is today
3 because the government has been requesting that my sentence
4 must be issued quickly. So all of this, your Honor, I have
5 heard through the media.

6 To my surprise yesterday when I said to my attorney,
7 Mr. Attorney, how are we going to deal with the pending *Brady*
8 violation matters he replies to me, *I don't have the power to*
9 *issue what you are asking me to review*, And we're in a country
10 that respects rights. What I ask for I told my attorney is my
11 rights, the rights that are being given to me by this
12 government and that it guarantees. What I ask regarding the
13 *Brady* violations of my attorney is nothing beyond the realm of
14 my case. Everybody that I ask information of were mentioned in
15 my case because of which I am surprised I am even more
16 surprised that he tells me I was hired for your sentence and
17 not for anything else.

18 INTERPRETER: The interpreter requests a repetition.

19 THE DEFENDANT: He let me know that he was not going
20 to correct my other attorney's mistakes. I am also an
21 attorney, your Honor, and I understand logically, while I am
22 not an attorney in this country, what constitutes a violation
23 and what constitutes concealment of evidence. I understand
24 from Rule 5(f) of the procedural code of this country that what
25 you ask for is the origin of it, the progeny, of where the

1 charges can stem from. Nothing was outside of that request.
2 Because my own he attorney, Mr. Brill, was interested in three
3 of the five points that I raised with him. To that I was
4 satisfied because I would be able to obtain my information
5 within 15 days. To my surprise, like I will say again, is that
6 I learned through the media that my sentence is going to be
7 issued on the 30th. That's why, your Honor, I wrote to you
8 previously asking whether in a meeting we could address my
9 attorney's limitations to attend to my case.

10 As to my other letter, the second letter --

11 INTERPRETER: The interpreter requests a repetition.

12 THE DEFENDANT: I felt betrayed by the rights that
13 this country is not giving me under the Sixth Amendment. When
14 he assured me that we would continue to work and I respectfully
15 requested whether my attorney could be replaced because the
16 year that we have been locked up has complicated the legal
17 work. On top of that, he never replies to me. And maybe you
18 can procure my correspondence where you were copied where I
19 make my requests.

20 INTERPRETER: Interpreter requests a clarification.

21 THE DEFENDANT: And I requested his representations
22 personally. It was obviously over strategic matters, but
23 really I feel I have been deceived when I presumed that he was
24 working reviewing notes from witnesses, reviewing notes of
25 people who were mentioned in the trial, which are very

1 interesting. And what's the rush I asked my attorney yesterday
2 to issue my sentence, to sentence me, when you told me that we
3 had work left to do. It's difficult to be trusting an attorney
4 I don't know what he might be preoccupied with when to my
5 surprise I come and the decision is going to be made with
6 regard to my next life, my next 40 years.

7 INTERPRETER: Interpreter requests a repetition.

8 THE DEFENDANT: I tried to do it in a timely manner.
9 In one of the letters he issues to the Court, he maintains that
10 he observes social media when he sees I am evidently not a
11 liked person in social media. When it surprises me more that
12 some of the letters issued by my family and children could be
13 helping me more. What might be the intent behind that? I
14 don't know. When in my country that is something that I don't
15 have the words to express that because in my country that is
16 something that should be handled more privately.

17 Your Honor, I have not had the opportunity to address
18 you in lengthy a way as I am today. First of all, because I
19 trusted my legal representatives; but I do feel that my rights
20 have been infringed. Because of that, like I said before, I
21 requested in a timely manner of you to be able to review as you
22 said as your order was issued with regard to the *Brady*
23 violations.

24 THE COURT: When did you make this request?

25 THE DEFENDANT: I made it of my attorney on the first

1 day that I received --

2 THE COURT: On the first day that you what?

3 THE DEFENDANT: November 11 of last year.

4 THE COURT: Thank you.

5 Go ahead.

6 You made this to your attorney; is that what you are
7 saying?

8 THE DEFENDANT: Correct.

9 That's why, your Honor, excuse me, I requested that
10 you issue printouts of correspondence from the MCC and that way
11 you would be able to look at all of this.

12 Thank you.

13 THE COURT: Are you finished addressing what you want
14 me to consider in passing sentence on you?

15 THE DEFENDANT: Your Honor, in the letters I issued
16 you, I was telling you I don't feel safe because I will say
17 again --

18 THE COURT: Are you talking about this page and a half
19 letter that was received on March 23rd; is that what you are
20 talking about?

21 THE DEFENDANT: That's the second letter.

22 THE COURT: What did the first letter say and where
23 did you send it?

24 THE DEFENDANT: The first letter I sent the day
25 before -- I don't know if it was the 13th. It was the Thursday

1 of the week before last.

2 THE COURT: Thank you very much.

3 Is there anything else you want to say on the subject
4 of the sentencing?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Let me just address one or two points. I
7 wrote this down and I believe this is what you said that I
8 issued orders "because of what happened in Judge Nathan's
9 chambers." That's not true. Those are not the facts. That's
10 not what happened. It is a matter of record in this country
11 that Rule 5(f) of the Federal Rules of Criminal Procedure was
12 amended as a result of a statute signed into law by the
13 President of the United States. It applied to all prosecutions
14 in all federal courts coast to coast. The statute had nothing
15 to do with Judge Nathan. The statute was a statute that worked
16 its way through the two houses of Congress and required all
17 federal judges in all federal cases to issue the order that I
18 issued and the oral admonition that I gave at the beginning of
19 this case.

20 If you are trying to create the impression that I have
21 some inside information and I am suspicious that there is some
22 *Brady* violation, you are wrong. Those are not the facts.
23 That's not what has happened. Since the day that your case
24 resulted in a verdict to the present, I have not seen one iota
25 of evidence, one indication whatsoever of any *Brady* violation

1 or *Giglio* violation in your case. None. Not even a basis for
2 an allegation. Not even an insinuation.

3 It is the case that defense counsel, who was appointed
4 after your retained counsel withdrew -- and I think that was
5 your second retained counsel. There was Mr. Rentaria before
6 the two counsel who tried the case as well -- have come up with
7 no evidence of a *Brady* violation. If there is a *Brady*
8 violation, you will have to show it. You'll be free to show it
9 and you will have the opportunity if you have a factual basis
10 for doing so for making a motion to correct the sentence or
11 vacate the sentence.

12 The good news, sir, is you will have a right to appeal
13 any sentence imposed in this case. You can ask the United
14 States Court of Appeals for the Second Circuit to appoint new
15 counsel for you. It is their practice as I understand it that
16 they would grant Mr. Brill's application to withdraw and would
17 appoint new counsel. This new counsel, however, is not there
18 to conduct roving investigations. They are your appellate
19 counsel. If you have information, you should share it with
20 them. They are not there to interview witnesses or the like.
21 The question is whether there was an error committed at your
22 trial or in your sentencing, and they will review that.

23 Now, the fact of the matter is there is a federal
24 policy that an individual should receive their sentence
25 promptly after a jury returns its verdict. The goal and

1 aspiration of a detained defendant is that that sentencing
2 proceeding take place within six weeks of the jury's verdict.
3 That's what we try do. That's part of the constitutional
4 promise of a speedy and public trial.

5 In your case, there were two things that happened.
6 One, I was requested by your counsel repeatedly to postpone the
7 sentencing date so that it could take place in a courtroom.
8 That is something I understand why you would want to be in a
9 courtroom for the sentencing and why you would have enough time
10 to prepare. It is extraordinary and unusual for a sentencing
11 to take place a year and five months after a jury has returned
12 a verdict. If I think about it in my time on the bench, I
13 don't believe I ever had a sentencing that has been protracted
14 by this length of time. Certainly the pandemic has been a big
15 factor in that.

16 The last adjournment was one your lawyer couldn't have
17 told you about in advance. You know why he couldn't tell you
18 about it in advance? Because it is one that I made on my own.
19 Why I did make it? Because I had a jury sitting in another
20 case and I did not want that jury to be reading about any
21 sentence that took place in this case. I exercised the
22 discretion to do that. The other case and its relationship is
23 a matter of record. It's under the same Docket No. 15 CR 379
24 as this case. The reasons why a judge would not want to the
25 proceed with the sentencing during the pendency of the jury's

1 deliberations are obvious to anyone aware of jury management
2 and insulating a jury from possible outside influences.

3 Your retained counsel submitted to me a 15-page
4 memorandum on the subject of sentencing. Mr. Brill carefully
5 gathered or received letters from family members, including
6 your mother, and translated them. There were siblings. They
7 were wonderful letters. I read each and every one of them. My
8 recollection is I think there were something on the order of 15
9 attachments to his submission. Each letter was translated for
10 the Court. They are on the public docket and they can be read
11 by anyone who wants to read them.

12 This is how the procedure goes. So, I thank you for
13 your comments. I understand that this is a different
14 procedural system than what you may have studied when you were
15 studying law and so I sympathize with that. I understand how
16 you must feel, but there has been no violation of *Brady* or
17 anything else that has come to my attention and it is untruth
18 to say that my order had something to do with some other
19 judge's case.

20 This is the government's opportunity to speak.

21 MR. LAROCHE: Thank you, your Honor.

22 The defendant's statements to the Court today were
23 astonishing. Given a chance to show even the slightest bit of
24 remorse or contrition for his abhorrent conduct, he instead
25 spent his time complaining about his attorneys. It is

1 stunning, but it also speaks to exactly who this individual is.

2 The evidence at trial showed very clearly that the
3 defendant is a central figure in one of the largest and most
4 violent cocaine trafficking conspiracies in the world. For 15
5 years the defendant used his social and political power to
6 operate Honduras, a country of roughly 10 million people, as a
7 virtual narco state. He was able to do so by conspiring with
8 some of the most powerful individuals in that country,
9 including his brother, the current president of Honduras.

10 With his powerful allies, he was able to operate on a
11 monumental scale. The defendant channeled his law enforcement,
12 military, and financial resources of the country into drug
13 trafficking. He caused brutal acts of violence to be committed
14 without consequence. He protected his co-conspirators from
15 extradition. He accepted millions of dollars in drug
16 trafficking proceeds and funneled it into national party
17 campaigns in 2009, 2013, and 2017 in exchange for promises of
18 protection to drug traffickers just like himself and his
19 co-conspirators.

20 In the process he facilitated the importation of an
21 enormous amount of cocaine -- 180,000 kilograms -- that came
22 into the United States. This is state-sponsored drug
23 trafficking. With all due respect to Mr. Brill, this is
24 exactly the type of conduct that the government should be
25 targeting both because of the impact it has on Honduras, a

1 place that has suffered immensely because at least in
2 significant part because of violent drug traffickers like the
3 defendant.

4 A life sentence is appropriate in this case and each
5 of the sentencing factors support it. The nature and
6 circumstances of this offense are astonishing. As I said, this
7 offense involved 185 tons of cocaine. That alone justifies a
8 life sentence. The crimes involved military-grade weapons,
9 violence, murder, and obstruction. Also indisputably important
10 factors. What sets this apart is the depth of corruption that
11 involved this defendant in his co-conspirators. He secured
12 protection from investigation, arrest, and extradition by
13 paying massive bribes to politicians like his brother and like
14 Soso. Millions of dollars in drug proceeds that were paid to
15 them in exchange your protection. Millions of dollars for
16 people like Chapo Guzman, the head of the Sinaloa cartel. Any
17 drug money they could get their hands- on in exchange for
18 protection, they did so.

19 This corruption had real consequences for Honduras.
20 As a direct result of the defendant's crimes, Honduras is one
21 of the principal transshipment points for cocaine in the world.
22 It is also one of the most violent places in the world. The
23 Lawlessness in Honduras is staggering. By 2013, for example,
24 San Pedro Sula, one of the key cities that was discussed in the
25 trial where meetings happened, was the deadliest place in the

1 world -- San Pedro Sula. Antonio Hernandez and his
2 co-conspirators' conduct contributed to that in a very
3 significant and meaningful way.

4 There is nothing that has been presented in the
5 personal characteristics of this defendant that materially
6 mitigates that conduct. During this investigation alone, the
7 defendant repeatedly lied to the Court, to law enforcement, and
8 he obstructed justice. To give a few examples in 2016 when he
9 knew he was under investigation by the U.S. Attorney's Office
10 and the DEA, he brazenly flew to the United States on a private
11 jet, came into a meeting with prosecutors and law enforcement
12 officers and had the audacity to say that he didn't know Leonel
13 Rivera despite the fact that he was at a meeting that was
14 video-recorded with Leonel Rivera. That is the arrogance of
15 this individual.

16 His crimes are only exacerbated by the fact that his
17 status and privilege didn't require him to do this. He can't
18 point to poverty or lack of opportunities or a need to support
19 his family as a basis for why he might have started drug
20 trafficking. He can't claim that he had no other choice to go
21 forward because he did. He came from a well-off family in
22 Honduras. He speaks very highly and the letters speak very
23 highly of his father and how he was a good person and how he
24 told them not to engage in illegal activity. He didn't need to
25 become a drug trafficker. He did it because he was greedy.

1 So his history and characteristics provides no basis
2 for leniency and it is abundantly clear from his statements
3 today he has shown no remorse -- to this day he has shown no
4 remorse -- for his conduct. He has accepted no responsibility.
5 He doesn't care clearly how his crimes have affected his
6 country. Do in part to violent drug traffickers approximately
7 every two of three of Honduras citizens are in poverty. The
8 response in the sentencing submission is falsely claim that the
9 cooperators in this case were no corroborated. That is just
10 shameful conduct and reprehensible in the sense that there is
11 absolutely no recognition of the incredible seriousness of
12 these crimes.

13 The defendant's remorsefulness demonstrates why
14 specific deterrence and incapacitation are important here. For
15 similar reasons it shows why general deterrence is a key
16 sentencing consideration. A life sentence would send a clear
17 message that the American justice system will not tolerate this
18 type of abhorrent conduct and is resinated significantly with
19 officials in Honduras who are still on Honduras who are
20 involved in these crimes.

21 The importance of general deterrence is underscored by
22 the fact that the conspiracy has continued to function after
23 trial. As the Court is aware and was discussed earlier,
24 posttrial violence against potential witnesses happened almost
25 immediately after trial. Nery Lopez Sanabria, the individual

1 whose drug ledger formed a key piece of physical evidence at
2 the trial and who in that drug ledger had notations for the
3 both the defendant and his brother Juan Orlando Hernandez.
4 Lopez Sanabria was viciously murdered eight days after trial.
5 Public reporting about that shows that Chase Lalani, one of the
6 defendant's investigators and also and Jose Hernandez, one of
7 the defendant's brothers or relatives who also wrote a letter
8 for him in connection with sentencing, those two individuals;
9 went to Lopez Sanabria in prison in unauthorized visits to
10 according to his attorneys try to get information from Lopez
11 Sanabria whether he was cooperating. That is stunning conduct
12 which supports that general deterrence is general important in
13 this case.

14 General deterrence is also important because many of
15 the defendant's co-conspirators who are publicly charged remain
16 in Honduras and nothing is happening to them. Extradition
17 requests have been sent and they have not been honored as for
18 several individuals, we have identified in our sentencing
19 submission.

20 In short, your Honor, the defendant is uniquely bad
21 character. He is a uniquely bad character who, along with his
22 brother, is at the center of years of state-sponsored drug
23 trafficking. Crimes of this scale, of this magnitude they all
24 require official protection and that is exactly what the
25 defendant provided on this trial record. He smothered Honduras

1 in corruption in order to achieve astonishing crimes, and the
2 government respectfully submits that a life sentence would send
3 the appropriate message to the defendant and other people like
4 him who have high-ranking positions who have used positions of
5 trust to the detriment of Honduras citizens. Cocaine
6 trafficking, violence, and corruption of this magnitude has
7 consequences and it will not be tolerated in the United States
8 no matter the penetrator and we believe that a life sentence
9 would send that message.

10 Thank you, your Honor.

11 THE COURT: Thank you, Mr. LaRoche.

12 This is the Court's statement of reasons for the
13 sentence to be imposed on Juan Antonio Hernandez Alvarado: In
14 sentencing the defendant, I have considered all of the
15 materials that I referenced at the outset. I have considered
16 the statements of Mr. Brill, of the defendant, and Mr. LaRoche.
17 I have considered each of the factors under Section 3553(a). I
18 need not recount all that I have considered, but I have
19 considered all of the factors.

20 After hearing the evidence at trial, a 12-person jury
21 found beyond a reasonable doubt that Juan Antonio Hernandez was
22 a member of a conspiracy to import drugs into the United States
23 from 2004 to 2016. In addition, the jury found him guilty of
24 conspiracy to possess a machine gun in furtherance of a drug
25 trafficking conspiracy and the substantive possession of the

1 weapons. The jury also found him guilty of lying in a 2016
2 voluntary interview with DEA agents.

3 The trial evidence was strong. The government
4 presented testimony from five cooperators, including Alex
5 Ardon, the mayor of El Paraiso Copan; Leonel Rivera, a leader
6 of the concharos, a drug-trafficking organization; Geovany
7 Rodriguez, a high-ranking Honduran national police official;
8 Chang Monroy, who directly purchased cocaine from the
9 defendant's laboratory in Columbia; Anel Rojo; Victor Yugo
10 Morales, who was a confederate in drug trafficking with the
11 defendant. There was also physical evidence -- photographs,
12 videos -- that were offered.

13 As a judge I am frequently called upon to impose
14 sentence upon individuals in the drug trade. Some have become
15 retail sellers infecting neighborhoods with a substance that
16 destroys families and lives to addiction, disease, and violence
17 whether turf wars or drive-by shootings. Some of the retail
18 sellers come from families where the mother was an addict or
19 the father was imprisoned for drug-related offenses. In many
20 of these cases, the defendants are responsible for retail sales
21 measured in grams. All justly receive lengthy prison
22 sentences.

23 I am also required to sentence those buying and
24 selling in kilo quantities. The quantity and type of drug
25 plays an important part in sentencing. I see young men from

1 Colombia who are caught on international waters on go-fast
2 boats loaded with cocaine with an ultimate designation to the
3 United States after transshipment through Honduras and other
4 countries in Central American. These go-fast drivers typically
5 have little knowledge of the source of the drugs or the
6 distribution network beyond their known. Many are unskilled
7 and impoverished and are endeavoring to support their families.
8 They receive lengthy sentences for their actions.

9 Then there is Juan Antonio Hernandez Alvarado, also
10 known as "Tony Hernandez." He is 41 years of age and
11 reasonably fit and in good health. He makes an excellent
12 appearance at least from the photographs introduced at trial.
13 Well dressed and wearing a warm and engaging smile. He is well
14 educated. He went to a military boarding school and received a
15 college degree in law. He told you today about his background
16 in law. In fact, he practiced law briefly after graduation
17 from the program.

18 His family had legitimate businesses, including a
19 hotel and a pharmacy in which he could have earned a good
20 honest living.

21 He was an elected member of the Honduran Congress and
22 could have used his considerable talents for good. Juan
23 Antonio elected to go in a very different direction.

24 The trial of Juan Antonio unmasked many details of
25 international narco trafficking. It corrupts every facet of

1 society and here the trafficking was indeed state sponsored.
2 Juan Antonio became a major facilitator of the movement of
3 cocaine through Honduras with an eventual destination of the
4 United States. He became partner in one of the ultimate
5 sources of supply of cocaine laboratory in Columbia. I think
6 it was Chang Monroy who testified that he alone purchased
7 15,000 kilos of cocaine from Tony Hernandez. Tony Hernandez
8 brazenly had his own brand imprinted with the initials TH for
9 Tony Hernandez.

10 He is responsible for the murders of Franklin Arita, a
11 trafficker who had interrupted the supply lines of Alex Ardon
12 Soriano utilizing a high-ranking police official to commit the
13 murder, Tigre Bonilla. He also is responsible for the death of
14 Chino, a member of the drug operation who had the misfortune of
15 having been arrested. And because he had extensive knowledge
16 of the operations of the defendant, he posed a threat. He knew
17 too much. He could cooperate if he chose to do so. It was
18 Juan Antonio who decided to have him killed. And when he
19 received word that he had been murdered, he expressed happiness
20 over this.

21 Juan Antonio rented helicopters to drug traffickers
22 and supplied them with weapons and ammunition, including in one
23 transaction 4,000 to 6,000 pieces of ammunition for assault
24 weapons that were boxed in containers with the markings of the
25 Honduran military. He acted as facilitator in bribes to

1 politicians, including his brother Juan Orlando Hernandez, in
2 the national party.

3 He met twice with Joaquin Guzman, "El Chapo," the
4 leader the Sinoloa cartel. It was after the second meeting
5 that he agreed to accept the price that was being to offered by
6 El Chapo of a million dollars for Juan Orlando's campaign in
7 exchange for protection. He, Juan Antonio, was selling
8 protection from the Honduran government in the person of his
9 brother Juan Orlando.

10 Now, El Chapo was not the only drug trafficker to whom
11 Tony Hernandez sold protection from prosecution and
12 interdiction. In exchange to payments to him he alerted drug
13 traffickers to night vision helicopter maneuvers and radar
14 patterns that may have resulting in seizing of shipments. By
15 the way, with regard to radar information, he charged the hefty
16 sum of \$50,000 upon providing such information.

17 Facts, not speculation, enabled the government to
18 reliably estimate the quantity of cocaine for which the
19 defendant bears responsibility during the period 2004 through
20 2015 and that is 185,000 kilograms of cocaine. At 8,000 doses
21 per kilogram, that's roughly 1.5 billion doses of cocaine. The
22 gross income of Juan Antonio from drug trafficking during the
23 same period is reliably estimated at 138 and a half million
24 dollars.

25 The defendant and his co-conspirators were indifferent

1 in the consequences of their acts on the lives of people in
2 their own country and in this country. A long sentence will
3 promote respect for law and will serve as a deterrent to others
4 who might engage in other similar conduct. It will protect the
5 public from further crimes of this defendant while he is
6 incarcerated.

7 I have considered the need to avoid unwarranted
8 sentence disparities. This man is at the highest amount you
9 can have for cocaine under the U.S. Sentencing Guidelines,
10 which is more than 450 kilograms. That's 450 kilograms. He is
11 criminally responsible for 185,000 kilograms. So very few
12 defendants are sentenced in that top category.

13 I have considered the arguments presented by each side
14 on comparative sentences found in the government's submission
15 at pages 51 to 55 and the defendant's memorandum at pages 13 to
16 15.

17 I have considered the guidelines, policy statements,
18 and official commentary of the United States Sentencing
19 Commission. I recognize that the guidelines are advisory and
20 not binding on the Court. I acknowledge that I have variance
21 discretion.

22 Defendant faces a mandatory minimum term of
23 imprisonment of 10 years on Count One and a mandatory
24 consecutive 360-month (30-year) minimum term of imprisonment on
25 Count Two. In other words, the sentence on Count Two by law

1 must run consecutive to the sentence on Count One. So by law,
2 I am required to sentence him to a minimum of four years on
3 Counts One and Two. Again, that is the minimum. The maximum
4 term on each of Counts One, Two, and Three is life imprisonment
5 and on Count Four five years.

6 The guidelines range for this defendant is life
7 imprisonment plus because the law requires it the imposition of
8 a consecutive term of 360 months on Count Two. The prosecution
9 and the Office of Probation both recommend that I impose such a
10 sentence. Often I find mitigating circumstances in cases where
11 I would not impose a guidelines sentence and I will sentence a
12 defendant below the guidelines; but based upon Juan Antonio's
13 free choice to engage in a life of drug trafficking over a
14 12-year period, which affected the lives of the people in the
15 United States and in Honduras, a sentence of life imprisonment
16 is richly deserved. By law I am required to impose the 30-year
17 mandatory minimum that is consecutive to that. I will impose
18 forfeiture of \$138,500,000 and the \$400 special assessment.
19 The foregoing in my view is sufficient but no greater than
20 necessary to achieve the purposes of Section 3553(a).

21 Finally, this Court is under no delusion that the
22 sentence will end narco trafficking through Honduras. Today's
23 sentence is an important step. It is not the only prosecution
24 in this district of individuals accused of using Honduras as a
25 transit point for drugs and corrupting their government. The

1 experience of law enforcement with other crime groups is
2 instructive.

3 Years ago law enforcement proceeded against La Cosa
4 Nostra, or the mafia, and by repeatedly going after leaders and
5 organizers of these organized crime families, their impact has
6 been weakened. They are a shadow of what they once were.

7 Ending the movement of cocaine from Colombia through
8 Honduras, Guatemala and Mexico is a hope of all good people of
9 Honduras and the United States and other countries of the
10 Americas. we can hope that looking back in years to come today
11 will have been an important step in eliminating the corrupting
12 influence of narco trafficking.

13 Does the defendant or his counsel have any objection
14 to the Court's statement of reasons or proposed sentence?

15 MR. BRILL: No legal objection, your Honor.

16 THE COURT: Same question for the government?

17 MR. LAROCHE: No, your Honor.

18 THE COURT: All right.

19 Juan Antonio Hernandez, it is the judgment of this
20 Court that you are hereby remanded to the custody of the United
21 States Bureau of Prisons to be imprisoned for life on Count One
22 and Count Three and 60 months on Count Four all to run
23 concurrently and a mandatory and consecutive 360-month sentence
24 on Count Two.

25 If you were ever released from prison, you will be on

1 supervised release for five years on Counts One to Three and
2 three years on Count Four.

3 Because I am imposing the forfeiture of 138 and a half
4 million dollars, there will not also be a fine.

5 The special assessment of \$400 is imposed.

6 With regard to the conditions of supervised release,
7 you must not commit another federal, state or local crime nor
8 unlawfully possess a controlled substance. You must refrain
9 from any unlawful use of a controlled substance. You must
10 cooperate in the collection of DNA. You must pay the
11 assessment in accordance with statute. The Standard Conditions
12 1 through 12 are imposed.

13 Further, you must obey the immigration laws and comply
14 with the directives of immigration authorities. You must
15 provide the Probation officer with access to any requested
16 financial information. You must not incur new credit card
17 charges.

18 The Court orders the forfeiture of all right, title,
19 and interest to any and all property constituting or derived
20 from any proceeds the defendant obtained directly or indirectly
21 as a result of the offense and any and all property used or
22 intended to be used in any manner or part to commit and to
23 facilitate the commission of the offense as well as the
24 forfeiture of all firearms.

25 I am entering an order of forfeiture that more fully

1 sets forth the terms of forfeiture.

2 Mr. Hernandez, you have the right to appeal this
3 sentence I have imposed on you. If you cannot afford the cost
4 of an appeal, you may apply for leave to appeal as a poor
5 person. The time limits for filing a notice of appeal are
6 brief and they are strictly enforced. If you request, the
7 Clerk of Court will prepare and file a notice of appeal on your
8 behalf immediately.

9 Do you understand all that?

10 THE DEFENDANT: Yes.

11 THE COURT: I hope that while you are in prison,
12 you'll reflect on your life, reflect on what you have done and
13 consider making the decision to turn your life around and
14 perhaps you can do some good for your family and your country.

15 I wish you and your family good health and peace of
16 mind.

17 Anything further from the government?

18 MR. LAROCHE: No. Thank you, your Honor.

19 THE COURT: Anything further from the defendant?

20 MR. BRILL: Your Honor, I will be filing a notice of
21 appeal on behalf of my client, and I assume I will then based
22 upon his comments today moving to be relieved.

23 THE COURT: Yes. That application is made to the
24 Second Circuit as you know as an experienced practitioner.

25 MR. BRILL: Yes.

1 THE COURT: Well, thank you all very much.

2 We are adjourned.

3 UNIDENTIFIED PERSON: God bless America. Justice for
4 Honduras.

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